

Alaska Bar Association Statement on Alleged Member Misconduct & the Disciplinary Process

The Alaska Bar Association strives to ensure that lawyers in Alaska conduct their legal practices with the highest ethical standards established by the Rules of Professional Conduct and Ethics Opinions adopted by the Board of Governors of the Alaska Bar. As part of that effort, the Bar is tasked with independently reviewing, investigating, and prosecuting allegations of lawyer misconduct.

Sometimes, the Bar Association is asked to comment on the alleged misdeeds of its members. Those requests may become even more pronounced when there are public reports involving allegations of sexual misconduct or impropriety. While the Alaska Bar Association's review and investigation of a complaint is confidential, we are often asked about whether or why the Bar is, or is not, being more vocal or taking quicker action. To help address these concerns, we believe it's important to provide an explanation of our disciplinary process.

The Alaska Bar Association in no way tolerates illegal or unethical conduct by its members. Indeed, the Bar has a robust system for investigating and responding to reported instances of such conduct. The Board of Governors serves as the Disciplinary Board for the Alaska Bar Association and oversees disciplinary matters for the Alaska Supreme Court, which has the ultimate authority over lawyer discipline. In doing so, the Bar Association follows the procedures and timelines established by the Alaska Supreme Court in the Alaska Bar Rules.

Disciplinary matters are ordinarily triggered by the filing of a grievance, or complaint, against a member of the Bar by other bar members, clients or members of the public. Except in very rare circumstances, the Bar does not initiate its own investigation of a lawyer's conduct. When a grievance is filed with the Bar, the complaint is promptly reviewed by Bar's discipline staff. Under Alaska Bar Rule 22, if Bar Counsel determines that the allegations contained in the grievance do not warrant an investigation, Bar Counsel will notify the complainant and respondent (the lawyer who is the subject of the grievance) in writing. The complainant may then file a request for review of the determination within 30 days of the date of Bar Counsel's written notification. A complainant may ask that the decision be reviewed or appealed to the Board Discipline Liaison—a member of the Board of Governors—to review the complaint. If they concur with the decision of Bar Counsel, the matter is closed.

However, if Bar Counsel or the Discipline Liaison, upon review, determines that the matter should be accepted, a case will be opened for a formal investigation into one or more of the allegations.¹ Bar staff contacts the Respondent, and if they are represented, their counsel. Staff will serve a copy of the grievance upon the Respondent and invite the Respondent to submit a response in writing of all facts and circumstances pertaining to the alleged misconduct.²

¹ If a lawyer actually faces criminal charges for their conduct, the Bar Association disciplinary matters would ordinarily be stayed pending the outcome of those proceedings. In some circumstances, however, the Alaska Supreme Court has the authority to order the interim suspension of the lawyer pending the outcome of the criminal case.

² Under Bar Rule 22(b), complainants and all persons contacted during the course of an investigation have a duty to maintain the confidentiality of discipline proceedings prior to the initiation of any formal proceedings, and it

Bar counsel and the Respondent may then discuss a potential agreement on discipline. Parties can agree to one of a variety of sanctions: censure, private reprimand, public reprimand by the Board of Governors or by the Supreme Court, probation, suspension, or disbarment. If the Respondent and Bar staff agree to a specific sanction or sanctions, the agreement is presented to the Board for approval. After conducting a hearing to review the proposed agreement, the Board can accept or reject the stipulation. If the stipulation calls for a serious sanction, the Board forwards the recommended sanction to the Alaska Supreme Court for final determination.

If the lawyer contests the allegations, they are entitled to a hearing before an Area Hearing Committee, which consists of two local lawyers and a public member. The Committee conducts what is essentially a trial, hearing evidence and making a determination about culpability. They also make a recommendation to the Board of Governors, acting as the Bar's Disciplinary Board, as to the appropriate level of sanction. At this point the Respondent can agree to the committee's recommended sanction, or contest it. If it is contested, evidence is presented to the Board of Governors and the sitting members make a determination of culpability and the appropriate sanctions. After reviewing the Hearing Committee's report and record, the Board enters an appropriate recommendation or order, which it sends to the Supreme Court for a final disciplinary determination. Throughout this process, there are repeated opportunities for both the complainant and the respondent to appeal various decisions, and corresponding timelines for each step in this comprehensive process.

Because of the Bar's role in the disciplinary proceedings, and because all who come before the Board are entitled to due process, it is critical that the Board not speak to matters that may one day come before it, or predetermine the culpability of any one member by weighing in on media or other public reports of alleged wrongdoing or misconduct. The Bar's lengthy disciplinary process may be understandably frustrating to people who view the Bar's lack of commentary or action as being out of touch or dismissive of member wrongdoing, particularly when allegations of sexual misconduct or impropriety may be at issue. But it would be irresponsible and unethical for the Bar—or its members—to disclose confidential information or prejudge a matter without first allowing the process to fully transpire. And disciplinary matters are lengthy in nature, as they are designed to assure a meaningful opportunity to be heard and to protect everyone's rights throughout the process.

The Alaska Bar Association, as an agent of the Alaska Supreme Court, takes its role in administering the ethical requirements that govern its members' conduct seriously. It expects the highest standards from its members and holds those who breach it accountable. This includes violations related to sexual misconduct. To that end, the Bar Association has also taken up recent measures to specifically address sexual misconduct in the practice of law. This led to the Supreme Court adopting Alaska Rules of Professional Conduct 8.4(f) – an ethical rule whose genesis stems from complaints of sexual harassment committed by members against other members engaged in the practice of law. The Bar Association is always interested in and

is regarded as contempt of court to breach this confidentiality in any way. After the filing of a petition for formal hearing, hearings held before either a Hearing Committee or the Board will be open to the public, though their deliberations remain confidential under Rule 21(a).

appreciative of feedback from its members. We will continually strive to listen to both our members and the public as we carry out our mission on behalf of Alaskans.

Adopted by the Board of Governors on October 28, 2021.